

No. 14713

United States
Court of Appeals
for the Ninth Circuit.

BESSIE ROTH,

Appellant,

vs.

SAMMY DAVIS, JR.,

Appellee.

Supplemental
Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

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Appeal from the United States District Court for the
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United States District Court, Southern District of California Central Division

No. 17,562-BH Civil

BESSIE ROTH,

vs.

WILL MASTIN TRIO, et al., (Does).

Present: Hon. Ben Harrison, District Judge;

Counsel for Plaintiff: Vivian M. Feld and Wm. Jerome Pollack;

Counsel for Answering Defendants: Hullen C. Callaway and John S. Bolton for answering defendants Will Masten, Sammy Davis, Sr., and Sammy Davis, Jr., a copartnership doing business under the fictitious name of Will Masten Trio, and Sammy Davis, Jr., individually.

MINUTES OF THE COURT—JAN. 20, 1955.

Proceedings:

For further jury trial. At 10:35 a.m., court convenes herein, and the jury and alternate juror being present,

Court makes a statement to the jurors relative to defendants' copartnership. Attorney Pollack, for plaintiff, moves that this cause be dismissed as to defendants Will Masten, Sammy Davis, Sr., and Sammy Davis, Jr., a copartnership doing business under the fictitious name of Will Masten Trio.

Attorney Callaway states that defendants have no objection thereto and Court Orders this cause dismissed as to said copartnership, only, and the fictitious named defendants.

Attorney Pollock argues to the jury on behalf of plaintiff.

At 11 a.m., Attorney Callaway on behalf of Def't Sammy Davis, Jr., argues to the jury. At 11:28 a.m., Attorney Pollock argues to the jury in closing on behalf of plaintiff. At 11:40 a.m., Court makes a statement to the jury and admonishes the jurors not to discuss this cause, and declares a recess until 1:30 p.m., today.

At 1:30 p.m., court reconvenes herein, and all being present as before, including counsel for both sides and the jury and alternate juror;

Court makes a statement to the jury and instructs the jury on the law of this case, and at the conclusion thereof, at 2:05 p.m., pursuant to the Court's order, John M. Scheibe, bailiff, is sworn as the officer to take charge of the jury during its deliberations upon a verdict herein.

The Court excuses the alternate juror, Leona A. Murray, and she retires from the court room.

At 2:06 p.m., pursuant to the Court's order, the jury retires from the court room in charge of said officer heretofore sworn, and two blank forms of verdicts and all exhibits in evidence, except Plf's Ex. 2 (Deposition of Helen S. Boss), are given to the jury for their use in their deliberations.

The jury having retired from the court room, Attorney Pollack for plaintiff, makes a statement of exceptions to certain instructions of the court relative to an unavoidable accident. Exception is noted.

Attorney Callaway for defendant states he excepts to the failure of the Court to give certain requested instructions. Exception is noted.

Attorney Pollack makes a further statement. The Court makes a further statement. Attorney Callaway makes a further statement.

At 2:14 p.m., court recesses until the coming in of the jury.

At 4:25 p.m., pursuant to the court's order, Douglas Wikle is sworn as an officer to take charge of the jury during their deliberations in place of John M. Scheibe, who was heretofore sworn.

At 4:52 p.m., pursuant to the Court's order, Elizabeth Bazar, is sworn as additional officer to take charge of the jury during their deliberations.

At 5:25 p.m., the Court orders that the two officers heretofore sworn, Douglas Wikle and Elizabeth Bazar, take the jury to supper, the expense of the meals for the jury and the two bailiffs to be paid by U.S.A., and that when the jury have finished with their meals that they be returned by said officers to the jury room for their further deliberations upon a verdict herein.

At 7:00 p.m., the jury returns from supper in charge of said two officers heretofore sworn and retire to the jury room to deliberate upon its verdict herein.

At 8:30 p.m., the jury returns into court, and counsel being present as before, and the jury being present, court convenes.

The Court inquires of the jury if it has arrived at a verdict, and the jury through its foreman states that it has, and thereupon, pursuant to the Court's order.

The Verdict of the jury, finding in favor of defendant Sammy Davis, Jr., individually, is presented and read, and on motion of counsel for plaintiff, the jury is polled and each juror states that the verdict as presented and read is his verdict. Court Orders the verdict filed and entered, to wit: (See Verdict Following:)

The Court Orders the jury discharged herein, and orders the jurors excused from further jury service in this court until notified by the clerk.

The Court directs the clerk to prepare and present judgment on the verdict to the Court for its approval and signature.

At 8:35 p.m., court adjourns.

(A true copy.)

EDMUND L. SMITH,
Clerk,

By MURRAY E. WIRE,
Deputy Clerk.

